

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAVID E. HALL,)	CASE NO. 1:04CV0052
)	
PETITIONER,)	
)	
v.)	JUDGE PETER C. ECONOMUS
)	
JESSE WILLIAMS,)	
WARDEN,)	
)	
RESPONDENT.)	MEMORANDUM OPINION
)	AND ORDER

This matter is before the Court upon the report and recommendation of United States Magistrate Judge James S. Gallas. (Dkt. # 19). Also before the Court is Petitioner, David E. Hall's "Motion to Amend Petition." (Dkt. # 20).

Petitioner, David E. Hall, ("Petitioner") filed a *pro se* application for habeas corpus pursuant to 28 U.S.C. § 2254 on January 12, 2004. (Dkt. # 1). Petitioner raised the following grounds in challenging the constitutionality of his criminal conviction:

GROUND ONE: Guilty plea was unintelligently made and induced without the full understanding of the consequences of such plea.

GROUND TWO: Denial of the right to personal property without the proper Due Process of Law.

GROUND THREE: Ineffective assistance of Trial counsel.

GROUND FOUR: A denial of right to an Appellate Counsel on a first Direct Appeal.

(Dkt. # 1). Respondent, Jesse Williams, Warden, (“Respondent”) argues that Petitioner has procedurally defaulted on each ground in his petition, and as a result, the application for habeas corpus must be dismissed. (Dkt. # 11).

This matter was referred to Magistrate Judge James S. Gallas on March 16, 2004 for preparation of a report and recommendation pursuant to 28 U.S.C. § 636 and LR 72.1. (Dkt. # 9). On November 15, 2006, Magistrate Judge Gallas issued a report recommending that the case be stayed pending a motion to reopen following Petitioner’s exhaustion of state remedies on ground four, the unexhausted claim, within thirty days. (Dkt. # 20). Petitioner would then be required to return to the federal courts within thirty days of having exhausted his claim in the state court. (Dkt. # 20). In the alternative, Magistrate Judge Gallas recommended that Petitioner be permitted to amend his petition within fifteen days in order to abandon the unexhausted ground for relief. (Dkt. # 19). At that time, Petitioner’s application would be returned to Magistrate Judge Gallas for resolution of the three exhausted grounds. (Dkt. # 19).

FED. R. CIV.P. 72(b) provides that objections to a report and recommendation must be filed within ten days after service, but Respondent has failed to timely file any such objections. Therefore, the Court must assume that the Respondent is satisfied with the Magistrate Judge’s recommendation. Any further review by this Court would be duplicative and an inefficient use of the Court’s limited resources. Thomas v. Arn, 728

F.2d 813 (6th Cir. 1984), aff'd, 474 U.S. 140 (1985); Howard v. Secretary of Health and Human Services, 932 F.2d 505 (6th Cir. 1991); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

Acting in anticipated accordance with this Court's adoption of the Magistrate Judge's report, Petitioner filed a "Motion to Amend Petition," requesting this Court allow him to amend his petition to exclude his fourth ground for relief, "denial of appellate counsel at the first appeal as of right." (Dkt. # 20). Petitioner states, in his motion, that he feels it "would be futile to pursue said issue at this point, therefore, he wishes to amend his [p]etition to abandon such Ground For Relief, [sic] in order to have this [Court] rule on exhausted grounds. (Dkt. # 20).

Accordingly, the Magistrate Judge's report and recommendation (Dkt. # 19) is hereby **ADOPTED**. Petitioner's "Motion to Amend Petition" is **GRANTED**. (Dkt. # 20). Petitioner must file an amended petition by **January 5, 2007** abandoning his fourth ground for relief. Upon Petitioner's filing of an amended petition, this case shall again be referred to Magistrate Judge James S. Gallas for the issuance of a report and recommendation on the three remaining exhausted grounds.

IT IS SO ORDERED.

/s/ Peter C. Economus - December 12, 2006
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE